

REMARKS

Claims 10-33 are pending in the application.

Claims 16-18, 20, 29-31 and 33 are noted to contain allowable subject matter.

Claims 10-33 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claims the subject matter which the applicant regards as the invention.

Claims 10, 21, 22 and 23 are now amended to delete the phrase "such as a dumper" so as to render the claims definite and thus overcome the 35 U.S.C. second paragraph rejection.

Regarding claims 10, 21 and 22, requiring clarification as to the intent of the claims to claim an extension device alone or in combination with the vehicle, claims 10, 21 and 22 are now amended so as to include the particulars of the automobile vehicle in the preamble of the claims, which is then followed by a recitation pertaining to the extension device so as to distinctly claims the extension device.

Claims 10 and 23 were rejected under 35 U.S.C. 102(a) as being anticipated by *LeMay et al.* (U.S. Pat. 6,152,341).

It is to be noted that applicant's claimed invention is directed to an extension device for extending the frame of an automotive vehicle, the type having a forward and a rear load-carrying vehicle section, which sections are jointed by means of an articulation joint. Thus, the forward vehicle section is allowed to pivot in relation to the rear vehicle section about the longitudinal direction of the vehicle while providing for varying the frame length of the vehicle for different area of application, such as a crane, for example, and thus the extension device in accordance with applicant's claimed invention is used between the forward and rear vehicle section in order to achieve a longer frame/vehicle when desired.

With respect to the *LeMay et al.* reference, this reference relates to a cargo carrier for being positioned behind a taxi vehicle and fitted to a vehicle hitch. A frame assembly of a telescoping type is arranged for moving the cargo unit between a traveling position, close to the passenger car, and a remote position. A cargo unit is moved to the remote position when a swingable closure for closing a rear entrance of the vehicle is operated. The frame assembly is designed for a substantially linear movement of the cargo unit by means of telescoping tubular members 52 and 54 which have a non-circular cross section and more particularly a rectangular cross section for counteracting any pivoting along the longitudinal direction.

The Examiner reads the cargo unit of *LeMay et al.* on the term “rear load-carrying vehicle section”. However, *LeMay et al.* fails to disclose that the rear load-carrying vehicle section is provided with rear wheels. Further, *LeMay et al.* fails to disclose that the front vehicle section is provided with a first articulation member, that the rear vehicle section is provided with a second articulation member, and these articulation members are adapted to fit to each other so as to allow pivoting of the vehicle section in relation to each other about the longitudinal direction of the vehicle. It is submitted that the hitch sleeve 34 and the rear section 54 of *LeMay et al.* are not designated for interconnection. Further, the hitch sleeve 34 and the rear section 54 are not articulation members so as to provide any pivoting motion. On the contrary, they are designed for a linear movement. Thus, the frame assembly of *LeMay et al.* as read on the term “extension device” does not teach any third articulation member for connection with one of the first and second articulation members so as to allow pivoting of the vehicle sections in relation to each other about the longitudinal direction of the vehicle.

Accordingly, it is respectfully submitted that claims 10 and 23 recite structural limitations that are patentable distinct from the teach of *LeMay et al.*

Claims 11-15, 19, 21, 22, 24-28 and 32 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *LeMay et al.* in view of *Cartwright* (U.S. Pat. 6,062,982).

With respect to the *Cartwright* patent, it discloses an apparatus for turning steerable wheels. A plurality of force transmitting members are connected to each other via the coupling assemblies. The variable length shafts of *Cartwright* may be circular in cross section; however, using articulation members with a circular cross section in the frame assembly of *LeMay et al.* will lead to pivoting the cargo unit with respect to the passenger car. Such a pivoting motion of the frame assembly of *LeMay et al.* would be undesirable and directly unsuitable, since the center of gravity of the cargo carrier would be moved sideways, the cargo carrier would be inclined and could possibly be damaged if it hits the ground and/or dropping its contents. Thus, articulation members with a circular cross section for achieving a pivoting motion are not functionally equivalent with the rectangular sections of the frame assemblies of *LeMay et al.* for achieving a linear motion.

It appears that the Examiner has merely selected bits and pieces from two references in an effort to assert his position of obviousness. This is an illegal way to combine references. See In re Wesslau, 147 USPQ 391, 393 (CCPA, November, 1965) wherein the Court stated:

The ever present question in cases within the ambit of 35 U.S.C. § 103 is whether the subject matter as a whole would have been obvious to one of ordinary skill in the art following the teachings of the prior art at the time the invention was made. It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciate of what such reference fairly suggests to one of ordinary skill in the art. (underline added)

In considering the rejection, the Examiner is requested to consider the combination as a whole as required by 35 U.S.C. 103 and refrain from only concentrating on obviousness of the differences. See, for example, the doctrine set forth by the Court in Hybritech, Inc. v. Monoclonal Antibodies, Inc., 231 USPQ 81, 93 (Fed. Cir 1986) where the Court stated:

Focusing on the obviousness of substitutions and differences instead of on the invention as a whole, as the Distinct court did ... was a legally improper way to simplify the difficult determination of obviousness. (underline added)

In view of the foregoing amendments and remarks, it is respectfully submitted that all of the claims now present in the application are deemed to be in condition for allowance and therefore further and favorable action is requested.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Dated: November 14, 2005

Respectfully submitted,

By 

Terrell C. Birch

Registration No.: 19,382

BIRCH, STEWART, KOLASCH & BIRCH,
LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant

WLG/TCB/mpc